

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GRAHAM ROGER-LEE DE-LUIS-CONTI,

No. C 08-5247 SBA (PR)

Plaintiff,

v.

**ORDER OF TRANSFER AND
ADDRESSING PENDING
MOTIONS**

M. CATES, et al.,

(Docket nos. 8, 14, 15)

Defendants.

INTRODUCTION

Plaintiff, a state prisoner currently incarcerated at the Substance Abuse Treatment Facility (SATF), in Corcoran, California, has filed this pro se civil rights action pursuant to 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis. Thereafter, Plaintiff filed an amended complaint.

On January 15, 2010, Plaintiff filed a motion entitled, "Motion to Conduct Discovery" (docket no. 8).

On August 20, 2010, Plaintiff filed a motion for leave to file a second amended complaint (SAC) (docket no. 12).

On September 9, 2010, he attached a proposed SAC (docket no. 13). On the same date, he filed a motion entitled, "Request for Summons" (docket no. 14).

On September 27, 2010, he filed a motion entitled, "Motion Requesting Summonses Be Issued and Motion Requesting Summonses Be Served" (docket no. 15).

DISCUSSION

A plaintiff may amend his complaint once as a matter of course at any time before a responsive pleading is served. See Fed. R. Civ. P. 15(a). Here, Plaintiff has already filed an amended complaint. Federal Rule of Civil Procedure 15(a) is to be applied liberally in favor of amendments, however, and leave is to be freely given when justice so requires. See Janicki Logging Co. v. Mateer, 42 F.3d 561, 566 (9th Cir. 1994). Moreover, the Court has not yet reviewed the amended complaint and a responsive pleading has not yet been served. In the interests of justice,

1 Plaintiff's motion for leave to file a SAC (docket no. 12) is GRANTED.

2 The acts complained of in the SAC occurred at SATF, which is located in the Eastern
3 District of California, and it appears that the defendants reside in that district. When jurisdiction is
4 not founded solely on diversity, venue is proper in the district in which (1) any defendant resides, if
5 all of the defendants reside in the same State, (2) the district in which a substantial part of the events
6 or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of
7 the action is situated, or (3) a judicial district in which any defendant may be found, if there is no
8 district in which the action may otherwise be brought. See 28 U.S.C. § 1391(b). Venue, therefore,
9 properly lies in the Eastern District and not in this one. See id.

10 Accordingly, in the interest of justice and pursuant to 28 U.S.C. § 1406(a), this action is
11 TRANSFERRED to the United States District Court for the Eastern District of California.

12 CONCLUSION

13 For the foregoing reasons,

14 1. Plaintiff's motion for leave to file a SAC (docket no. 12) is GRANTED. The Clerk of
15 the Court is directed to file the attached SAC (docket no. 13), which is labeled "Complaint Under
16 the Civil Rights Act, Title 42 U.S.C. § 1983," and docket the aforementioned document as Plaintiff's
17 "Second Amended Complaint." The Clerk is further directed to mark the SAC as filed on
18 September 9, 2010, the date it was received by the Court.

19 2. This action is TRANSFERRED to the United States District Court for the Eastern
20 District of California. The Clerk shall transfer the case forthwith.

21 3. Plaintiff's "Motion to Conduct Discovery" (docket no. 8) is DENIED as premature
22 because, as mentioned above, the Court has not reviewed Plaintiff's claims, and the defendants have
23 not yet served a responsive pleading in this action. The denial is without prejudice to Plaintiff filing
24 such a motion once this case has been transferred to the Eastern District and that court has reviewed
25 the SAC.

26 4. Because the Court is transferring this action, Plaintiff's "Request for Summons"
27 (docket no. 14) and his "Motion Requesting Summonses Be Issued and Motion Requesting
28 Summonses Be Served" (docket no. 15) are TERMINATED on this Court's docket as no longer

1 pending in this district.

2 5. This Order terminates Docket nos. 8, 14 and 15.

3 IT IS SO ORDERED.

4 DATED: September 30, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge

United States District Court
For the Northern District of California

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 GRAHAM R L DELUIS-CONTI et al,

Case Number: CV08-05247 SBA

5 Plaintiff,

CERTIFICATE OF SERVICE

6 v.

7 DIRECTOR OF CORRECTIONS et al,

8 Defendant.
9 _____/

10
11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on October 5, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
16 located in the Clerk's office.

17
18 Graham Roger-Lee De-Luis-Conti T-21195
19 Corcoran State Prison
20 P.O. Box 5242
Corcoran, CA 93212

21 Dated: October 5, 2010

22 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk
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